IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9333 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRA BHULABHAI CHUNARA VAGRI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAI R BHATT for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

1. Petitioner has filed this petition under Article 226 of the Constitution of India challenging his detention order passed against him under the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) on 12th June, 2000 by Police Commissioner, Rajkot

City, in exercise of power conferred upon him by Sec. 3(1) of the PASA Act. The petitioner was detained in pursuance of this order from 13th June, 2000.

2. The grounds of detention placed on record reveals that in all 4 offences under Sections 457, 379, 380, etc. of the IPC are registered against the petitioner before the Rajkot Taluka Police Station and the petitioner was indulged in illegal activities of committing thefts. The detaining authority has relied upon the investigation of the above said cases and further statements of two witnesses on assurance of anonymity offered statements that the petitioner was hardened criminal and headstrong person and was obstruction to public order. From the above material, the detaining authority came to the conclusion that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act. The detaining authority observed that there was no other alternative except to detain the petitioner under the PASA Act.

3. Learned Advocate Mrs. Subhadraben Patel for the petitioner and learned AGP Mr. Udai R. Bhatt for the respondents were heard.

4. The detention order was challenged by the petitioner on various grounds. One of the grounds is failure on the part of the detaining authority to consider less drastic remedy available to the petitioner. It appears from the rival contentions that the detention order is vitiated by non-application of mind by the detaining authority. The detention order is vitiated because the petitioner was in judicial custody at the time of serving of the detention order and was not capable of continuing any illegal activities as alleged against him. Secondly, the detaining authority failed to consider the aspect of less drastic remedy available to the detaining authority. In ZUBEDABIBI RASIDKHAN PATHAN vs. STATE OF GUJARAT, reported in 1995 (2) GLR, 1134, Division Bench of this court observed that the powers granted to the Court for cancelling the bail under Section 437(5) of the Cr.P.C. are far more wide in import and intent, which would be less drastic remedy and could have been considered by the detaining authority. In the detention order, it is nowhere mentioned that less drastic remedy was ever considered. Therefore, the subjective satisfaction of the detaining authority is vitiated on this ground alone. This view is fortified again by the Division Bench of this Court in Letters Patent Appeal No. 1056 of 1999, which is decided on 15th of September, 1999.

5. The order of detention under challenge is required to be set aside on the ground mentioned above. Therefore, other grounds urged on behalf of the petitioner are not dealt with.

6. In view of this discussion, this petition is allowed. The detention order passed by the detaining authority, Commissioner of Police, Rajkot City, on 12th June, 2000, is hereby ordered to be quashed and set aside. Petitioner - Amra Bhalubhai Chunara Vagri is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair